

Internal Revenue Service
memorandum

CC:EL:DL-105896-97

Br4:LPlatt

date: September 30, 1997

to: National Director, Customer Service Operations T:C:O

from: Chief, Branch 4, Disclosure Litigation CC:EL:DL

subject: Disclosures of Taxpayer/Loan Applicants' Tax Information to
so-called "Fourth-Party" Agents of Lending Institutions pursuant to I.R.C. § 6103(c)

This responds to your request for clarification of the requirements of a valid I.R.C. § 6103(c) consent furnished by a taxpayer/loan applicant on Form 4506 or Form 8821 authorizing the Internal Revenue Service (Service) to disclose such taxpayer/loan applicant's confidential tax information to a so-called "fourth-party" agent or contractor of a "third-party" (e.g., a mortgage broker or mortgage lender) with whom such taxpayer/loan applicant is dealing, directly. In addition, you asked what, if any, restrictions apply to redisclosure or use by such third and fourth parties of tax information obtained by them pursuant to a taxpayer/loan applicant's valid section 6103(c) consent?

Short Answer

Taxpayers may utilize Form 4506 or Form 8821 to authorize the Service to disclose their confidential tax information to one or more recipients specifically designated by the taxpayer using either of these Forms.

However, once the Service releases a taxpayer's tax information to a recipient designated by the taxpayer on Form 4506 or Form 8821, the Service has no authority under section 6103 to control how the recipient uses the taxpayer's tax information, nor whether, and if so, to whom and for what purposes, the recipient rediscloses the taxpayer's tax information.

Analysis

A: Disclosure of Tax Information by Consent of the Taxpayer Pursuant to I.R.C. § 6103(c)

I.R.C. § 6103(a) provides that taxpayers' returns and return information "shall be confidential," and may be disclosed only as expressly authorized under the provisions of

section 6103 or some other section of the Internal Revenue Code (Code).¹ Thus, the Service is precluded, by the terms of section 6103(a), from disclosing a taxpayer's federal tax information **unless** a Code provision specifically authorizing the disclosure can be found.

In terms of disclosure to an individual or entity designated by the taxpayer (for instance, a mortgage lender from whom the taxpayer is seeking a loan), the only potentially applicable disclosure authority under the Code is contained in section 6103(c).

Section 6103(c) provides, in pertinent part, as follows:

(c) DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.-- The Secretary may, **subject to such requirements and conditions as he may prescribe by regulations**, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure.... However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration. (Emphasis added).

The applicable "requirements and conditions ... prescribe[d] by regulations" are found in Treas. Reg. § 301.6103(c)-1. This regulation contains three subsections, the first of which, Treas. Reg. 301.6103 (c)-1(a), by its express terms, applies to applications for loans where tax returns or other tax information are needed as part of the loan approval process.

Treas. Reg. § 301.6103(c)-1(a) provides, in part:

A request for or consent to disclosure must be in the form of a **written** document pertaining solely to the authorized disclosure. The written document must be signed and dated by the taxpayer who filed the return or to whom the return information relates. **The taxpayer must also indicate** in the written document --

(1) The taxpayer's identity information described in section 6103(b)(6);²

¹ "Return" includes "any tax or information return ... filed with the Secretary." I.R.C. § 6103(b)(1). "Return information" is defined to encompass virtually all data "received by, recorded by, prepared by, furnished to, or collected by" the Service with respect to liability or possible liability "for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense" under the Code. I.R.C. § 6103(b)(2).

² I.R.C. § 6103(b)(6) defines the term "taxpayer identity" to mean "the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as defined in [the Code]), or a combination thereof."

- (2) The identity of the person to whom disclosure is to be made;
- (3) The type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and
- (4) The taxable year covered by the return or return information.

(Emphasis added).³

The regulations further require that the taxpayer's signed and dated consent be received by the Service within 60 days of execution by the taxpayer. .

In short, a valid section 6103(c) consent must clearly identify the consenting taxpayer, the intended recipient(s) of the taxpayer's tax information, and exactly what tax information the taxpayer wants the Service to disclose. The regulations state that these

³ Regulations implementing section 6103(c), were issued in substantially their current form, as temporary regulations, effective January 1, 1977. See T.D. 7479, 1977-1 C.B. 376. Proposed T.D. 7479 was accompanied by a memorandum dated April 1, 1977, from the Commissioner of Internal Revenue to the Assistant Secretary of the Treasury that recommended approval of the proposed temporary regulations. That memorandum explained the proposed regulation's requirement that consenting taxpayers identify themselves, the data they want disclosed, and the identity of the intended recipient of that data, with sufficient precision to allow the Service to process the request without fear of committing an unauthorized disclosure, *e.g.*, by disclosing data other than that which was intended, or by disclosing data to a recipient other than the intended recipient, or both:

[W]e do not believe that Congress intended to permit a taxpayer to designate a person to obtain any and all ... tax data concerning the taxpayer as that person might find relevant to his own activity. We think that Congress intended that taxpayers be aware of -- and specify -- exactly what tax data is to be furnished to their designee under section 6103(c).

These proposed regulations, which are specifically authorized by section 6103(c), require that the taxpayer's disclosure authorization be contained in a separate written document. This requirement would prevent a disclosure authorization from being buried in a lengthy benefit application to go unnoticed or unread. The regulation would also require the taxpayer to describe the type or kind of tax involved (and, in the case of return information, the specific data to be disclosed) and the taxable years involved. It should be noted that the regulations require the taxpayer to provide this detail. This is intended to prevent a taxpayer from signing a blank form which could later be completed by the designee to authorize disclosure of whatever the designee might later decide was necessary.

Commissioner's memorandum at 2 (emphasis in original).

details are to be "indicat[ed]" in a written document signed by the consenting taxpayer (here, the loan applicant), who in addition, must sign and date that written document. See Treas. Reg. § 301.6103(c)-1(a).

The Service has not interpreted the language of Treas. Reg. § 301.6103(c)-1(a) as precluding use of preprinted or partially completed typed or computer generated consent forms, nor as requiring that consenting taxpayers personally type or print all details required by the regulations, when using a preprinted consent form. For example, a preprinted or partially completed prepared consent form that bears the name and mailing address of a person(s) or entity(ies) that may receive a taxpayer's tax data, which is filled out by a taxpayer to provide all other details required by Treas. Reg. § 301.6103(c)-1(a), and which is signed and dated by the taxpayer upon completion and/or to establish adoption of any preprinted data items, and which otherwise is a facially valid section 6103(c) consent, may be honored by the Service provided it is received by the Service within 60 days of execution by the consenting taxpayer.

Forms 4506 and 8821 are two preprinted forms prepared by the Service and approved by the Office of Management and Budget (OMB) that are designed to be used by taxpayers who wish to authorize the Service to disclose specified items of their tax information for specified tax periods, to one or more specifically designated recipients.⁴ When properly completed, signed, and dated by a taxpayer, and received by the Service within 60 days thereafter, a Form 4506 or Form 8821 serves as a valid section 6103(c) consent. Thus, either Form 4506 or Form 8821 is appropriate for use by taxpayer/loan applicants that want the Service to disclose certain of their tax data to "third" and/or "fourth" parties for use in connection with the processing of a loan application.

Taxpayers must specifically designate the name and current mailing address of each intended recipient of their tax data on Form 4506 line 5 (rev. 5-97), or, if Form 8821 is used, on line 2 of that form. See Treas. Reg. § 301.6103(c)-1(a)(2). In the case of taxpayer/loan applicants the information furnished on the designee data line will depend on the circumstances of the loan application process.

The Service's obligation is to ensure that the intended designee is sufficiently identified that only an authorized recipient receives a taxpayer's confidential tax information. In this regard, we suggest you contact the Office of Governmental Liaison and Disclosure, Section 6103/Privacy Operations Division, CP:EX:GLD:O, for assistance in determining what is "sufficient identification" and to whom the tax information should be sent based on the various types of consent forms you are receiving and the alternative scenarios you are confronting in terms of the data furnished by taxpayers to meet the requirements of Treas. Reg. § 301.6103(c)-1(a).

B. Redisdisclosure or Use by "Third" and/or "Fourth" Parties of Tax Returns/Return Information Released to them by the Service under I.R.C.

⁴ Form 4506 also may be used by a taxpayer to request the taxpayer's own return(s) or certain items of return information.

§ 6103(c)

As explained above, section 6103 establishes a general rule that federal tax returns and return information are confidential and shall not be disclosed except as authorized under the Code. I.R.C. § 6103(a). The unauthorized disclosure of returns or return information may result in criminal penalties against the individual who disclosed the information (section 7213), and/or an action for civil damages (section 7431).

Section 6103(a) then lists the persons subject to the general prohibition on disclosure of federal tax data. This list does not include mortgage brokers or private sector banks and similar commercial lending institutions who obtain information pursuant to a taxpayer's consent. Therefore, mortgage brokers, banks and similar lending institutions that obtain section 6103 protected tax information pursuant to valid section 6103(c) taxpayer consents receive such data "free and clear" of limitations under the Code regarding how or whether such information is used and protected (including whether it is safeguarded and destroyed after only a single use), or whether it is, for example, storehoused, sold, leased, published, or otherwise reused or redisclosed for purposes unrelated to the original consent-based disclosure.⁵

⁵ A government agency also may be a third party recipient of tax data pursuant to a taxpayer's consent. A technical argument may exist, based on the plain language of section 6103(a), that redisclosure or use of tax data obtained by the agency pursuant to a taxpayer's section 6103(c) consent, for a purpose other than the purpose for which the taxpayer authorized disclosure, constitutes an unauthorized disclosure of federal tax information. See section 6103(a) ("no officer or employee" of specified government agencies "shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section." (Emphasis added)). However, we believe the better answer is that section 6103 does not regulate redisclosure and use by such agency recipients.

Should you wish to explore possibilities outside the Code for imposing redisclosure and use restrictions, we refer you to the General Legal Services function, CC:F&M:GLS.⁶

If you have any questions, please contact Lynnette Platt, the attorney assigned to this matter, at 622-4570.

_____/s/_____
JOSEPH J. URBAN

cc: Assistant Chief Counsel (General Legal Services) CC:F&M:GLS
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⁶ While there is no basis under section 6103 for the Service to impose redisclosure and use restrictions on lenders, the public's perception (albeit mistaken) may be that the Service has such authority. In this regard, we note that Form 4506 has been redesigned and now contains an explicit statement advising taxpayers that the Service has no authority to control redisclosure or use of tax data released to a taxpayer's-designee by the Service pursuant to a Form 4506 request by the taxpayer.